

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



September 16, 2003

Regulation Packages #0902-23, 0403-09,
and 0503-11 (Nonsubstantive)

CDSS MANUAL LETTER NO. CCL-03-07

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22, DIVISION 12,
CHAPTER 3, FAMILY CHILD CARE HOMES**Regulation Package#0902-23****Effective 07/16/03****Sections 102352, 102370, 102370.1, 102370.2, 102395, 102416, 102416.1, 102417, and 102419**

This manual letter has been posted on the Office of Regulations Development website at http://www.dss.cahwnet.gov/ord/ChildCareC_626.htm.

Currently, the Community Care Licensing Division (CCL) of the California Department of Social Services (CDSS) has regulations in place that apply to all community care facilities (Division 6) and to all child care centers (Division 12). The regulations amend the current CCL regulations by amending the applicable existing Definition; Criminal Record Clearance; Criminal Record Exemption; and Personnel Record Sections throughout Division 6, Chapters 1, 8, and 8.5 and Division 12, Chapters 1 and 3. The amendments are consistent with Health and Safety Code Sections 1522, 1522.1, 1568.09, 1569.17, 1596.871, and 1596.877, which were amended by Senate Bill (SB) 1984, Chapter 1267, Statutes of 1994. SB 1984 requires that the Department place into regulations existing policies and criteria, that have been used and refined for approximately 25 years, to evaluate criminal record exemption requests. Where necessary, regulations throughout all affected sections have been reworded and/or restructured for clarity and consistency.

The attached regulations contain the portion of the emergency regulations that pertain to Family Child Care Homes, Division 12, Chapter 3.

These regulations were adopted on an emergency basis effective July 16, 2003 and will be considered at the Department's public hearing on October 15, 2003.

Regulation Package#0403-09**Effective 07/24/03****Section 102370**

These emergency regulations implement and make specific the legislative intent with regard to preventing harm to children in licensed child care facilities. If an individual, required to be fingerprinted under state law in order to operate, work in, or be present in a child care facility, is arrested for a crime for which, if convicted, an individual is not eligible by law to receive an exemption, the continued presence of that individual in a child care facility constitutes a possible risk to the children in those facilities. These emergency regulations specify the procedures the Department will follow to require a licensee to cease operation or remove an individual from the facility for up to 30 days pending the Department's investigation into the facts underlying the arrest. During the 30-day period, the Department will conduct an investigation and make a final determination regarding whether or not administrative action will be taken against the licensee or individual.

These regulations were adopted on an emergency basis effective July 24, 2003 and will be considered at the Department's public hearing on October 15, 2003.

Regulation Package#0503-11 (Nonsubstantive)

Effective 09/08/03

Section 102395

Section 102395(c) was amended to correct a cross reference to Health and Safety Code Section 1596.99 from Health and Safety Code Section 1569.99.

FILING INSTRUCTIONS

All new revisions are indicated by a vertical line in the left margin. Revisions shown in graphic screen will continue to be shown in that manner until new revisions are done to those pages. The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Community Care Licensing changes was Manual Letter No. CCL-03-06. The latest prior manual letter containing Family Child Care Homes regulation changes was Manual Letter No. CCL-02-05.

<u>Page(s)</u>	<u>Replace(s)</u>
1 and 2	Pages 1 and 2
4 through 7.1	Pages 4 through 7.1
16 through 23	Pages 16 through 23
29.1 and 29.2	Pages 29.1 and 29.2
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Attachments

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FAMILY CHILD CARE HOMES

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Article 1. GENERAL REQUIREMENTS AND DEFINITIONS**102351.1 SPECIFIC EXEMPTION****102351.1**

The provisions of Chapter 1, General Requirements, shall not apply to family child care homes.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73 and 1596.81, Health and Safety Code.

102352 DEFINITIONS**102352**

- (a) (1) "Adult" or "Substitute Adult" means a person who is 18 years of age or older.
- (2) "Applicant" means any person or persons making an application for a license to operate a family child care home.
- (3) "Assistant Provider" means a person at least 14 years of age who is primarily involved in caring for children during the hours that the home provides care.
- (b) (Reserved)
- (c) (1) "Capacity" means the maximum number of children for whom care is authorized at any one time.
- (2) "Child" means a person, including an infant, who has not yet reached his or her eighteenth birthday.
- (3) "Child Abuse Central Index" means the California Department of Justice maintained statewide, multi-jurisdictional, centralized index of child abuse investigation reports. These reports pertain to alleged incidents of physical abuse, sexual abuse, mental/emotional abuse and/or severe neglect. Each child protection agency (police, sheriff, county welfare and probation departments) is required by law to forward to the California Department of Justice a report of every child abuse incident it investigates, unless an incident is determined to be unfounded.
- (4) "Child Abuse Central Index Clearance" means that the California Department of Justice has conducted a name search of the index and the search did not result in a match or the search resulted in a match but the California Department of Social Services determined after an investigation that the allegation of child abuse or neglect was not substantiated.
- (5) "Completed Application" means that all required information and documentation has been provided to the Department, including the completed application form and, for a large family child care home, a fire clearance; and that a home visit has been completed.

102352 DEFINITIONS (Continued)**102352**

(6) "Conviction" means:

(A) A criminal conviction in California, or

(B) Any criminal conviction of another state, federal, military or other jurisdiction, which if committed or attempted in California, would have been punishable as a crime in California.

(7) "Criminal Record Clearance" means an individual has a California Department of Justice clearance and an FBI clearance.

(d) (1) "Deficiency" means any failure to comply with any provision of the California Child Day Care Act (Health and Safety Code, Section 1596.70 et seq.) and/or regulations adopted by the Department pursuant to the Act.

(2) "Department" means the State Department of Social Services. This term supersedes the term "Licensing agency" as used in previous regulations.

(3) "Department of Justice Clearance" means an individual has no felony or misdemeanor convictions reported by the California Department of Justice. However, the individual may have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.

(4) "Director" means the Director of Social Services.

(e) (Reserved)

(f) (1) "Family Day Care" or "Family Child Care" means regularly provided care, protection and supervision of children, in the care giver's own home, for periods of less than 24 hours per day, while the parents or authorized representatives are away. The term "Family Child Care" supersedes the term "Family Day Care" as used in previous regulations.

(A) "Small Family Child Care Home" means a home that provides family child care for up to six children, or for up to eight children if the criteria in Section 102416.5(b) are met. These capacities include children under age 10 who live in the licensee's home.

(B) "Large Family Child Care Home" means a home that provides family child care for up to 12 children, or for up to 14 children if the criteria in Section 102416.5(c) are met. These capacities include children under age 10 who live in the licensee's home and the assistant provider's children under age 10.

102352 DEFINITIONS (Continued)**102352**

- (2) "Federal Bureau of Investigation (FBI) Clearance" means an individual has no felony or misdemeanor convictions reported by the FBI. The individual may also have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.

(g) (Reserved)

(h) (1) "Home" means the licensee's residence as defined by Government Code Section 244.

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Government Code Section 224 states:

In determining the place of residence the following rules shall be observed:

- (a) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose.
- (b) There can only be one residence.
- (c) A residence cannot be lost until another is gained.
- (d) The residence of the parent with whom an unmarried minor child maintains his or her place of abode is the residence of such unmarried minor child.
- (e) The residence of an unmarried minor who has a parent living cannot be changed by his or her own act.
- (f) The residence can be changed only by the union of act and intent.
- (g) A married person shall have the right to retain his or her legal residence in the State of California notwithstanding the legal residence or domicile of his or her spouse.

HANDBOOK ENDS HERE

(i) (1) "Infant" means a child who has not yet reached his or her second birthday.

(j) (Reserved)

(k) (Reserved)

(l) (1) "License" means a written authorization by the Department or licensing agency to operate a family day care home.

102352 DEFINITIONS (Continued)**102352**

(2) "Licensee" means an adult licensed to operate a Family Day Care Home and who is primarily involved in providing care for the children during the hours that the home provides care.

(3) "Licensing agency" See definition for Department.

(m) (1) "Medical Professional" means an individual who is licensed or certified in California to perform the necessary medical procedures within his/her scope of practice. This includes, but is not limited to, Medical Doctor (MD), Registered Nurse (RN) and Licensed Vocational Nurse (LVN).

(n) (Reserved)

(o) (Reserved)

(p) (1) "Parent" or "Authorized Representative" means any person or entity authorized by law to act on behalf of any child. Such person or entity may include but not be limited to a minor's parent, a legal guardian, a conservator or a public placement agency.

(2) "Provider" means anyone providing care to children as authorized by these regulations and includes the licensee, assistant provider or substitute adult.

(q) (Reserved)

(r) (1) "Rehabilitation" means that period of time, together with any education, counseling or therapy, training, stable employment, restitution, remorse, changes in lifestyle, or community service, which assist an individual in reestablishing good character.

(2) "Relative" means spouse, parent, stepparent, son, daughter, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any such person denoted by the prefix "grand" or "great" or the spouse of any of the persons specified in this definition, even after the marriage has been terminated by death or dissolution.

(s) (1) "Simplified Exemption" means an exemption granted on the Department's own motion, as authorized in Health and Safety Code Section 1596.871(c)(3), if the individual's criminal history meets specific criteria established by Department regulation.

102352	DEFINITIONS (Continued)	102352
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| (t) (Reserved)

| (u) (Reserved)

| (v) (Reserved)

| (w) (Reserved)

| (x) (Reserved)

| (y) (Reserved)

| (z) (Reserved)

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.74, 1596.75, 1596.77, 1596.770, 1596.78, 1596.791, 1596.81(b), 1597.44, and 1597.465, Health and Safety Code; and Government Code Section 244.

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102370 CRIMINAL RECORD CLEARANCE**102370**

- (a) Prior to the Department issuing a license, the applicant(s) and all adults residing in the home shall obtain a California criminal record clearance or exemption.

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- (1) Section 1596.871(a)(5) of the Health and Safety Code states in part:

An applicant and any person specified in subdivision (b) shall submit a second set of fingerprints to the Department of Justice, for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Health and Safety Code Section 1596.885. The department may also suspend the license pending an administrative hearing pursuant to Health and Safety Code Section 1596.886.

HANDBOOK ENDS HERE

- (b) The following individuals are exempt from the requirement to submit fingerprints:
- (1) A volunteer who is a relative, legal guardian, or foster parent of a child in the facility.
 - (2) A volunteer that provides time-limited specialized services if all of the following apply:
 - (A) The volunteer is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption.
 - (B) The volunteer spends no more than 16 hours per week at the facility.
 - (C) The volunteer is not left alone with children in care.
 - (3) A student who is enrolled or participating at an accredited educational institution if all of the following apply:
 - (A) The student is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption.
 - (B) The facility has an agreement with the educational institution concerning the placement of the student.

102370 CRIMINAL RECORD CLEARANCE (Continued)**102370**

- (C) The student spends no more than 16 hours per week at the facility.
 - (D) The student is not left alone with the children in care.
 - (4) A third-party repair person, or similar retained contractor, if all of the following apply:
 - (A) The individual is hired for a defined, time-limited job.
 - (B) The individual is not left alone with children.
 - (C) When children are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.
 - (5) A medical professional, as defined in Section 102352(m)(1), who holds a valid license or certification from the individual's governing California medical care regulatory entity if all of the following apply:
 - (A) The criminal record of the individual has been cleared as a condition of licensure or certification by the individual's California medical care regulatory entity.
 - (B) The individual is providing time-limited specialized clinical care or services.
 - (C) The individual is providing care or services within the individual's scope of practice.
 - (D) The individual is not a community care facility licensee and is not employed, retained, or contracted by the licensee.
 - (6) Employees of a licensed home health agency who have a contract with a child's parent or guardian and are in the facility at the request of that parent or guardian.
 - (A) The exemption shall not apply to an individual who is employed, retained or contracted by the licensee.
 - (7) An attendant or facilitator for a child with a developmental disability who is visiting the client or providing direct care and supervision to the child.
 - (A) The exemption shall not apply to an individual who is employed, retained or contracted by the licensee.
- (c) All individuals subject to a criminal record review shall be fingerprinted and sign a Criminal Record Statement (LIC 508 [Rev. 1/03]) under penalty of perjury.
- (1) A person signing the LIC 508 must:

102370 CRIMINAL RECORD CLEARANCE (Continued)**102370**

- (A) Declare whether he/she has been convicted of a crime, other than a minor traffic violation as specified in Section 102370(g).
 - (B) If convicted of a crime other than a minor traffic violation as specified in Section 102370(g), provide information regarding the conviction.
- (2) The licensee shall submit these fingerprints to the California Department of Justice along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or comply with Section 102370(j) prior to the individual's employment, residence, or initial presence in the child care home.
 - (A) Fingerprints shall be submitted to the California Department of Justice by the licensee or sent by electronic transmission to the California Department of Justice by a fingerprinting entity approved by the California Department of Social Services.
 - (B) A licensee or an applicant for a license may not submit, or enable another to submit under the licensee's or the applicant's authority, the fingerprints of any person who does not, or whom the licensee or applicant reasonably believes will not reside, provide care and supervision to, or have contact with clients at the licensee's or applicant's facility.
 - 1. If the Department determines that the licensee or applicant has violated Section 102370(c)(2)(B), the Department may immediately cease processing criminal record and Child Abuse Central Index clearances for the facility until the licensee or applicant complies with this section or a disciplinary proceeding is completed.
- (d) Prior to employment, residence or initial presence in the facility, all individuals subject to a criminal record review shall:
 - (1) Obtain a Department of Justice clearance or a criminal record exemption as required by the Department or
 - (2) Request a transfer of a criminal record clearance as specified in Section 102370(j) or
 - (3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 102370.1(p), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.
- (e) Violation of Section 102370(d) will result in a citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars (\$100) per violation by the Department.
 - (1) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1596.871.

102370 CRIMINAL RECORD CLEARANCE (Continued)**102370**

- (f) Violation of Section 102370(d) may result in a denial of the license application or suspension and/or revocation of the license.
- (g) If the criminal record transcript of any individuals specified in the Health and Safety Code Section 1596.871(b) discloses a plea or verdict of guilty or a conviction following a plea of nolo contendere for a crime other than a minor traffic violation for which the fine was less than \$300, and an exemption pursuant to Section 102370.1(a) has not been granted, the Department shall take the following actions:
 - (1) For initial applicants, denial of the application.
 - (2) For current licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license.
 - (3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1596.8897, and deny the application or revoke of the license, if the individual continues to provide services and/or reside at the facility.
 - (4) For individuals residing in the facility, licensee or employee, exclusion of the affected individual pursuant to Health and Safety Code Section 1596.8897, and denial of the application or revocation of the license, if the individual continues to provide services and/or reside in the facility.
- (h) The Department shall notify the licensee and the affected individual associated with the facility, in concurrent, separate letters, that the affected individual has a criminal conviction and needs to obtain a criminal record exemption.
- (i) If the conviction was for another crime, except a minor traffic violation, the Department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.
- (j) A licensee or applicant for a license may request a transfer of a criminal records clearance from one state licensed facility to another, or from TrustLine to a state licensed facility by providing the following documents to the Department:
 - (1) A signed Criminal Background Clearance Transfer Request, LIC 9182 (Rev. 4/02).
 - (2) A copy of the individual's:
 - (A) Driver's license, or
 - (B) Valid identification card issued by the Department of Motor Vehicles, or
 - (C) Valid photo identification issued by another state or the United States government if the individual is not a California resident.

102370 CRIMINAL RECORD CLEARANCE (Continued)**102370**

- (3) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

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- (4) Section 1596.871(h)(2) of the Health and Safety Code states:

The California Department of Social Services shall hold criminal records clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal records clearances to be transferred.

HANDBOOK ENDS HERE

- (k) The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of employees, volunteers that require fingerprinting and non-client adults residing in the facility.
- (1) Documentation shall be available for inspection by the Department.
- (l) Any individual who is required to obtain or has obtained a criminal record clearance or exemption as a condition of association with, or licensure of, a facility shall report to the Department by telephone any subsequent arrest, conviction, or parole or probation violation within 48 hours of the event.
- (1) Confirmation of the telephone report must be made in writing to the Department within seven calendar days. The written report shall include the following:
- (A) The law enforcement agency and court involved;
 - (B) A detailed description of the events leading to the arrest, conviction, or parole or probation violation;
 - (C) The individual's current and pending legal involvement; and
 - (D) The individual's current address and phone number.
- (m) The Department may seek verification of an individual's criminal record as reported to the Department from any member of the public or affected individual.
- (1) Upon obtaining confirmation of the offense, the Department shall proceed as if this criminal record information was provided by the California Department of Justice.

102370 CRIMINAL RECORD CLEARANCE (Continued)**102370**

- (n) If the Department determines that any licensee or individual specified in Health and Safety Code Section 1596.871(b) is arrested for a crime for which, if convicted, an individual is not eligible, by law, to receive an exemption, pending completion of its investigation into the facts underlying the arrest, the Department may take the following actions as it deems necessary:
- (1) If the arrested individual is a licensee, the Department may notify the licensee, by telephone or in writing, to immediately cease operation for up to 30 days.
 - (2) If the individual arrested is not a licensee, the Department may notify the licensee and the individual associated with the facility, by telephone or in writing, that the individual may not be resent in the facility for up to 30 days.
 - (3) If the individual arrested is the licensee's spouse or a dependent adult that resides in the licensee's home, the Department may notify the licensee, by telephone or in writing, to immediately cease operation for up to 30 days.
- (o) After the Department notifies the licensee, pursuant to Section 102370(n)(1) or (n)(3), or the individual pursuant to Section 102370(n)(2), he or she may present a written appeal that:
- (1) he or she is not the individual who was arrested,
 - (2) he or she has not been arrested for a crime that by law an individual is not eligible to receive an exemption, or
 - (3) he or she was arrested for a crime that by law an individual is not eligible to receive an exemption but the charges have been dropped or reduced to a crime that by law an individual would be eligible to receive an exemption.
- The appeal shall contain the licensee's or individual's current address and telephone number. After the Department receives the appeal and any supporting documentation, it shall review the appeal and notify the licensee or individual of its decision within five (5) working days.
- (p) Should the Department determine at any time during the 30 days referred to in Sections 102370(n)(1), (n)(2), and (n)(3) that the criminal charges have been dropped or reduced to a charge for a crime that by law an individual would be eligible to receive an exemption, the Department shall immediately rescind the notice.
- (q) Nothing in this section shall be interpreted to supercede the Department's authority under Sections 1596.886 and 1596.8897 of the Health and Safety Code.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.871 and 1597.59, Health and Safety Code.

102370.1 CRIMINAL RECORD EXEMPTIONS**102370.1**

- (a) The Department will notify a licensee to act immediately to remove from the facility or bar from entering the facility any person described in Sections 102370.1(a)(1) through (5) below while the Department considers granting or denying an exemption. Upon notification, the licensee shall comply with the notice.
- (1) Any person who has been convicted of, or is awaiting trial for, a sex offense against a minor;
 - (2) Any person who has been convicted of a felony;
 - (3) Any person who has been convicted of an offense specified in Sections 243.4, 273a, 273d, 273g, or 368 of the Penal Code or any other crime specified in Health and Safety Code Section 1596.871(c)(2);
 - (4) Any person who has been convicted of any crime specified below:
 - (A) Battery
 - (B) Shooting at Inhabited Dwelling
 - (C) Corporal Injury on Spouse/Cohabitant
 - (D) Discharging Firearm with Gross Negligence
 - (E) Exhibiting Weapon/Firearm
 - (F) Threat to Commit a Crime Resulting in Gross Bodily Injury or Death
 - (G) Criminal Threat to Harm or Injure Another Person
 - (H) Cruelty to Animals
 - (I) Willful Harm or Injury to Child; or
 - (5) Any other person ordered to be removed by the Department.
 - (6) The Department may assess a civil penalty of \$50 per day for failure to comply with Section 102370.1(a).

102370.1 CRIMINAL RECORD EXEMPTIONS (Continued)**102370.1**

- (b) In addition to the requirements of Section 102370.1(a), the licensee must:
- (1) Return the confirmation of removal form that is sent by the Department, within five (5) days of the date of the form, that confirms under penalty of perjury that the individual has been removed from the facility.
 - (A) Confirmation must be made on either a Removal Confirmation – Exemption Needed, LIC 300A (Rev. 12/02), Removal Confirmation - Denial, LIC 300B (Rev. 12/02), Removal Confirmation - Rescinded, LIC 300C (Rev. 12/02), or Removal Confirmation - Nonexemptible, LIC 300D (Rev. 12/02).
 - (B) The Department may assess a civil penalty of \$50 per day for failure to comply with Section 102370.1(b).
 - (2) Provide a copy of the Addendum to Notification of Parent's Rights (Regarding Removal/Exclusion) (LIC 995B Rev. 03/01) to one parent or authorized representative of every child currently in care within one day of receipt of the addendum from the Department.
 - (A) Upon notice from the Department that the individual may return to the facility, provide a copy of the Addendum to Notification of Parent's Rights (Regarding Reinstatement) (LIC 995C Rev. 03/01) to one parent or authorized representative of every child in care within one day of receipt of the notice and addendum from the Department.
 - (3) Obtain a signed and dated receipt from one parent or authorized representative that acknowledges that he/she was given a copy of the addendum specified in 102370.1(b)(2) and (2)(A).
 - (4) Maintain copies of the signed and dated receipt required in Section 102370.1(b)(3) in each child's file. Copies shall be made available to the Department upon request.
- (c) If it is found that the applicant or any other person residing at or regularly in the home during the hours of care, has ever been convicted of a crime other than a minor traffic infraction as specified in Section 102370.1(b), the application for licensure shall be denied or the license shall be revoked, unless the following apply:
- (1) Such person has been granted a full and unconditional pardon for the offense, by the governor.
 - (2) After a review of the criminal record transcript, the Department may grant an exemption from Section 102370(d) if:
 - (A) The applicant/licensee requests an exemption for himself or herself, or

102370.1 CRIMINAL RECORD EXEMPTIONS (Continued)**102370.1**

- (B) The applicant/licensee requests an exemption in writing for a individual associated with the facility, or
 - (C) The applicant/licensee chooses not to seek an exemption on the affected individual's behalf, and the affected individual requests an individual exemption in writing, and
 - (D) The affected individual presents substantial and convincing evidence satisfactory to the Department that he/she has been rehabilitated and presently is of such good character as to justify being issued or maintaining a license, employment or residence in a licensed facility.
- (3) The Department shall consider factors, including, but not limited to, the following, as evidence of good character and rehabilitation:
- (A) The nature of the offense committed including, but not limited to, whether it involved violence or a threat of violence to others.
 - (B) Time elapsed since the offense committed, and the number of offenses.
 - (C) Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition.
 - (D) Activities since conviction, such as employment, education, or participation in therapy, that would indicate rehabilitation.
 - (E) Character references.
 - 1. All character references shall be on a Reference Request form (LIC 301E - Exemptions [Rev. 9/02]).
 - (F) A Certificate of Rehabilitation from a Superior Court.
 - (G) Evidence of honesty and truthfulness as revealed in exemption application documents.
 - 1. Documents include, but are not limited to:
 - a. A Criminal Record Statement (LIC 508, Criminal Record Statement [Rev. 1/03]) and
 - b. The individual's written statement/explanation of the conviction and the circumstances about the arrest.

102370.1 CRIMINAL RECORD EXEMPTIONS (Continued)**102370.1**

- (H) Evidence of honesty and truthfulness as revealed in exemption application interviews and conversations with the Department.
- (4) The Department shall also consider the following factors in evaluating a request for an exemption:
 - (A) Facility and type of association.
 - (B) The individual's age at the time the crime was committed.
- (d) To request a criminal record exemption, individuals must submit information that indicates that he/she meets the requirements of Section 102370.1(c)(2)(D). The Department will send a written notice to the licensee or license applicant that lists the information that must be submitted to request a criminal record exemption. The information must be submitted within thirty (30) days of the date of the Department's notice.
 - (1) Individuals who submit a criminal record exemption request shall cooperate with the Department by providing the information required by Section 102370.1(c)(2)(D) and any information requested by the Department to process the exemption request, pursuant to Section 102370.1(c)(3).
 - (2) If the individual who requests a criminal record exemption is an employee or resident other than a spouse or dependent family member and does not submit the information requested in the Department's written notice within 30 days of the date of the notice, the Department may cease processing the exemption request and close the case.
 - (3) If the individual who requests a criminal record exemption is an applicant, licensee, spouse or dependent family member and does not submit the information requested in the Department's written notice within 30 days of the date of the notice, the Department may deny the exemption request.
- (e) The Department may deny an exemption request if:
 - (1) The licensee and/or the affected individual fails to provide documents requested by the Department or
 - (2) The licensee and/or the affected individual fails to cooperate with the Department in the exemption process.
- (f) The reasons for any exemption granted or denied shall be in writing and kept by the Department.
- (g) The Department has the authority to grant a criminal record exemption that places conditions on the individual's continued licensure, and employment or presence in a licensed facility.

102370.1 CRIMINAL RECORD EXEMPTIONS (Continued)**102370.1**

- (h) It shall be conclusive evidence that the individual is not of such good character as to justify issuance of an exemption if the individual:
 - (1) Makes a knowingly false or misleading statement regarding:
 - (A) Material relevant to their application for a criminal record clearance or exemption,
 - (B) His or her criminal record clearance or exemption status to obtain employment or permission to be present in a licensed facility, after the Department has ordered that they be excluded from any or all licensed facilities, or
 - (C) His or her criminal record clearance or exemption status in order to obtain a position with duties that are prohibited to him/her by a conditional exemption; or
 - (2) Is on probation or parole.
 - (A) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the Department may, in its discretion, grant a criminal record exemption notwithstanding Section 102370.1(h)(2).
- (i) The Department shall consider granting a criminal record exemption for an individual when the individual's criminal record history meets all of the applicable criteria specified in Sections 102370.1(i)(1) through (6) and the individual provides the Department with substantial and convincing evidence of good behavior as specified in Section 102370.1(c)(2)(D). For purposes of this section, a violent crime is a crime that, upon evaluation of the code section violated and/or the reports regarding the underlying offense, presents a risk of harm or violence.
 - (1) The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or probation.
 - (2) The individual has been convicted of two or more nonviolent misdemeanors and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (3) The individual has been convicted of one or more violent misdemeanors and 15 consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (4) The individual has been convicted of one nonviolent felony and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

102370.1 CRIMINAL RECORD EXEMPTIONS (Continued)**102370.1**

- (5) The individual has been convicted of two or more nonviolent felonies and ten consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
- (6) The individual has not been convicted of a violent felony.
- (7) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the period of lapsed time required in Sections 102370.1(i)(1) through (5) above shall begin from the last date of conviction(s).
- (j) It shall be a rebuttable presumption that an individual is not of such good character as to justify the issuance of an exemption if the individual fails to meet the requirements specified in Sections 102370.1(i)(1) through (6).
- (k) The Department shall not grant an exemption if the individual has a conviction for any offense specified un Section 1596.871(f) of the Health and Safety Code.

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Health and Safety Code Section 1596.871(f) provides that no exemption shall be granted if an individual has been convicted of any of the following offenses:

- (1) Penal Code Sections 136.1 and 186.22 – Gang related/Intimidation of witnesses or victims.
- (2) Penal Code Sections 187, 190 through 190.4 and 192(a) – Any murder/Attempted murder/Voluntary manslaughter.
- (3) Penal Code Section 203 – Any mayhem.
- (4) Penal Code Section 206 - Felony torture.
- (5) Penal Code Sections 207, 208, 209, 209.5, 210 – Kidnapping.
- (6) Penal Code Sections 211, 212.5, 213, 214 – Any robbery.
- (7) Penal Code Section 215 – Carjacking.
- (8) Penal Code Section 220 – Assault with intent to commit mayhem, rape, sodomy or oral copulation.

HANDBOOK CONTINUES

102370.1 CRIMINAL RECORD EXEMPTIONS (Continued)**102370.1**

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- (9) Penal Code Section 243.4 – Sexual battery.
- (10) Penal Code Section 261(a), (a)(1), (2), (3), (4) or (6) – Rape.
- (11) Penal Code Section 262(a)(1) or (4) – Rape of a spouse.
- (12) Penal Code Section 264.1 – Rape in concert.
- (13) Penal Code Section 266 – Enticing a minor into prostitution.
- (14) Penal Code Section 266c – Induce to sexual intercourse, etc. by fear or consent through fraud.
- (15) Penal Code Section 266h(b) – Pimping a minor.
- (16) Penal Code Section 266i(b) – Pandering a minor.
- (17) Penal Code Section 266j – Providing a minor under 16 for lewd or lascivious act.
- (18) Penal Code Section 267 – Abduction for prostitution.
- (19) Penal Code Section 269 – Aggravated assault of a child.
- (20) Penal Code Section 272 – Contributing to the delinquency of a minor (must involve lewd or lascivious conduct).
- (21) Penal Code Sections 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994] – Willfully causing or permitting any child to suffer under circumstances or conditions likely to produce great bodily harm or death.
- (22) Penal Code Section 273d – Willfully inflicting any cruel or inhuman corporal punishment or injury on a child.
- (23) Penal Code Section 285 – Incest.
- (24) Penal Code Section 286 – Sodomy.
- (25) Penal Code Section 288 – Lewd or lascivious act upon a child under 14.

HANDBOOK CONTINUES

102370.1 CRIMINAL RECORD EXEMPTIONS (Continued)

102370.1

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- (26) Penal Code Section 288a – Oral copulation.
- (27) Penal Code Section 288.2 – Felony conviction for distributing lewd material to children.
- (28) Penal Code Section 288.5(a) – Continuous sexual abuse of a child.
- (29) Penal Code Section 289 – Genital or anal penetration or abuse by any foreign or unknown object.
- (30) Penal Code Section 290(a) – All crimes for which one must register as a sex offender including attempts and not guilty by insanity.
- (31) Penal Code Section 311.2(b), (c) or (d) – Transporting or distributing child-related pornography.
- (32) Penal Code Section 311.3 – Sexual exploitation of a child.
- (33) Penal Code Section 311.4 – Using a minor to assist in making or distributing child pornography.
- (34) Penal Code Section 311.10 – Advertising or distributing child pornography.
- (35) Penal Code Section 311.11 – Possessing child pornography.
- (36) Penal Code Sections 314 paragraphs 1 or 2 – Lewd or obscene exposure of private parts.
- (37) Penal Code Section 347(a) – Poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well, reservoir or public water supply.
- (38) Penal Code Section 368 – Elder or dependent adult abuse.
- (39) Penal Code Section 417(b) – Drawing, exhibiting or using a loaded firearm.
- (40) Penal Code Section 451(a) or (b) – Arson.
- (41) Penal Code Section 460(a) – First degree burglary if it is charged and proved that a non-accomplice was present in the residence during the burglary.
- (42) Penal Code Sections 186.22 and 518 – Gang related/Extortion.
- (43) Penal Code Section 647.6 or prior to 1988 former Section 647a – Annoy or molest a child under 18.

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102370.1 CRIMINAL RECORD EXEMPTIONS (Continued)**102370.1**

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- (44) Penal Code Section 653f(c) – Solicit another to commit rape, sodomy, etc.
- (45) Penal Code Sections 664/187 – Any attempted murder.
- (46) Penal Code Section 667.5(c)(7) – Any felony punishable by death or imprisonment in the state prison for life.
- (47) Penal Code Section 667.5(c)(8) – Enhancement for any felony which inflicts great bodily injury.
- (48) Penal Code Section 667.5(c)(13) – Enhancement for violation of Penal Code Section 12308, 12309 or 12310 – Exploding or igniting or attempting to explode or ignite any destructive device or explosive with intent to commit murder.
- (49) Penal Code Section 667.5(c)(14) - Any kidnapping – Penal Code Sections 207, 208, 209, 209.5 and 210.
- (50) Penal Code Section 667.5(c)(22) - Any violation of Penal Code Section 12022.53 – Enhancement for listed felonies where use of a firearm.
- (51) Penal Code Section 667.5(c)(23) – Use of weapon of mass destruction.
- (52) Business and Professions Code Section 729 – Felony sexual exploitation by a physician, psychotherapist, counselor, etc.

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- (l) The Department shall consider granting a simplified criminal record exemption if the individual has the criminal history profile outlined in Sections 102370.1(l)(1) through (4) below:
 - (1) The individual does not have a demonstrated pattern of criminal activity;
 - (2) The individual has no more than one conviction;
 - (3) The conviction is a misdemeanor and is a crime that is nonviolent and does not pose a risk of harm to an individual; and
 - (4) It has been at least five consecutive years since the completion of the most recent period of incarceration or supervised probation.

102370.1 CRIMINAL RECORD EXEMPTIONS (Continued)**102370.1**

- (m) At the Department's discretion, an individual who is otherwise eligible for a simplified exemption may be required to go through the standard exemption process if the Department determines such action will help to protect the health and safety of clients.
- (n) If the Department denies or cannot grant a criminal record exemption the Department will:
 - (1) For initial applicants, deny the application.
 - (2) For current licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license.
 - (3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1596.8897, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.
 - (4) For individuals residing in the facility, or the licensee, exclude the affected individual pursuant to Health and Safety Code Section 1596.8897, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.
- (o) If a request for an exemption has been denied, the individual shall be excluded for a period of two years unless the individual has been convicted of a crime for which no exemption may be granted pursuant to Section 102370.1(m). If a request for an exemption has been denied based on a conviction of a crime for which no exemption may be granted, the individual shall be excluded for the remainder of the individual's life.
 - (1) If the Department determines during the review of an exemption request, that the individual was denied an exemption for a conviction of a crime for which an exemption may be granted within the preceding two years, the Department shall cease any further review of the request until two years have elapsed from the date of the denial. In cases where the individual requested a hearing on an exemption denial, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department upholding the denial. In cases where the individual submitted a petition for reinstatement or reduction in penalty pursuant to Government Code Section 11522 that was denied, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department denying the petition.
 - (2) An exclusion order based solely upon a denied exemption shall remain in effect and the individual shall not be employed in or present in a licensed facility or certified home, unless either a petition or an exemption is granted.

102370.1 CRIMINAL RECORD EXEMPTIONS (Continued)**102370.1**

- (3) If an individual who has previously been denied an exemption re-applies after the relevant time period described in Section 102370.1(o)(1) above, the Department may, in its discretion, grant or deny the subsequent request for an exemption.
 - (4) If an individual submits a petition pursuant to Government Code Section 11522 for reinstatement or reduction of penalty for an exclusion, an individual must submit his/her fingerprints through an electronic fingerprinting system approved by the Department and submit to the Department a statement of the reason why the individual should be permitted to work or be present in a facility, along with all information required of an individual requesting a criminal record exemption as provided in Section 102370.1. If it is determined, based upon information provided by the Department of Justice, that the individual has been convicted of a crime for which no exemption may be granted, the petition shall be denied. An individual's failure to submit fingerprints or other information as requested by the Department, shall be grounds for denial of the petition. The burden shall be on the petitioner to prove sufficient rehabilitation and good character to justify the granting of the petition.
- (p) A licensee or applicant for a license may request a transfer of a criminal record exemption from one state licensed facility to another by providing the following documents to the Department:
- (1) A signed Criminal Record Exemption Transfer Request, LIC 9188 (Rev. 3/02).
 - (2) A copy of the individual's:
 - (A) Driver's license, or
 - (B) Valid identification card issued by the Department of Motor Vehicles, or
 - (C) Valid photo identification issued by another state or the United States Government if the individual is not a California resident.
 - (3) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).
- (q) The Department may consider factors including, but not limited to, the following in determining whether or not to approve the transfer of an exemption from one facility to another:
- (1) The basis on which the Department granted the exemption;
 - (2) The nature and frequency of client contact in the new position;
 - (3) The category of facility where the individual wishes to transfer;

102370.1 CRIMINAL RECORD EXEMPTIONS (Continued)**102370.1**

- (4) The type of clients in the facility where the individual wishes to transfer;
 - (5) Whether the exemption was appropriately evaluated and granted in accordance with existing exemption laws or regulations; or
 - (6) Whether the exemption meets current exemption laws or regulations.
- (r) If the Department denies the individual's request to transfer a criminal record exemption, the Department shall provide the individual and the licensee with written notification that states the Department's decision and informs the affected individual of their right to an administrative hearing to contest the Department's decision.
- (s) At the Department's discretion, an exemption may be rescinded if it is determined that:
- (1) The exemption was granted in error or
 - (2) The exemption does not meet current exemption laws or regulations or
 - (3) The conviction for which an exemption was granted subsequently becomes non-exemptible by law.
- (t) The Department may rescind an individual's criminal record exemption if the Department obtains evidence showing that the individual engaged in conduct which is inconsistent with the good character requirement of a criminal record exemption, as evidenced by factors including, but not limited to, the following:
- (1) Violations of licensing laws or regulations;
 - (2) Any conduct by the individual that indicates that the individual may pose a risk to the health and safety of any individual who is or may be a client;
 - (3) Nondisclosure of a conviction or evidence of lack of rehabilitation that the individual failed to disclose to the Department, even if it occurred before the exemption was issued; or
 - (4) The individual is convicted of a subsequent crime.
- (u) If the Department rescinds an exemption the Department shall:
- (1) Notify the licensee and the affected individual in writing; and
 - (2) Initiate the appropriate administrative action.

102370.1 CRIMINAL RECORD EXEMPTIONS (Continued)**102370.1**

- (v) If the Department learns that an individual has been convicted of a crime after obtaining a criminal record clearance or exemption, the Department, at its sole discretion, may initiate the appropriate administrative action to protect the health and safety of clients.

NOTE: Authority cited: Sections 1596.81 and 1596.871, Health and Safety Code. Reference: Sections 1596.81(b), 1597.59(b), 1596.885, and 1596.8897, Health and Safety Code; and Section 42001, Vehicle Code.

102370.2 CHILD ABUSE CENTRAL INDEX**102370.2**

- (a) Prior to issuing a license for a family child care home, the Department shall check the Child Abuse Central Index (CACI) pursuant to Health and Safety Code Section 1596.877 and Penal Code Section 11170(b)(3). The Department shall check the CACI for the applicant(s) and all individuals subject to a criminal record review pursuant to Health and Safety Code Section 1596.871(a) and shall have the authority to approve or deny a facility license, employment, residence or presence in the facility based on the results of the review.
- (1) The applicant shall submit the Child Abuse Central Index checks (LIC 198A [3/99] for state licensed facilities and LIC 198 [4/99] for county licensed facilities) for all individuals required to be checked directly to the California Department of Justice at the same time that the individual's fingerprints are submitted for a criminal background check as required by Section 102369(b)(8).
- (A) Individuals who have submitted the Child Abuse Central Index check (LIC 198A [3/99]) for state licensed facilities and LIC 198 [4/99] for county licensed facilities) with fingerprints on or after January 1, 1999 need not submit a new check if the individual can transfer their criminal record clearance or exemption pursuant to Section 80019(e) or Section 80019.1(f).

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102370.2 CHILD ABUSE CENTRAL INDEX (Continued)**102370.2**

- (2) The Department shall investigate any reports received from the CACI. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. The Department shall not deny a license based upon a report from the CACI unless the Department substantiates the allegation of child abuse.
- (b) Subsequent to licensure, all individuals subject to a criminal record review, pursuant to Health and Safety Code Section 1596.871 shall complete a Child Abuse Central Index check (LIC 198A [3/99] for state licensed facilities and LIC 198 [4/99] for county licensed facilities), prior to employment, residence or initial presence in the family child care home.
 - (1) The licensee shall submit the Child Abuse Central Index checks (LIC 198A [3/99] for state licensed facilities and LIC 198 [02/01] for county licensed facilities) directly to the California Department of Justice at the same time that the individual's fingerprints are submitted for a criminal background check as required by Section 102370(c)(2).
 - (A) Individuals who have submitted the Child Abuse Central Index check (LIC 198A [3/99]) for state licensed facilities and LIC 198 [4/99] for county licensed facilities) with fingerprints on or after January 1, 1999 need not submit a new check if the individual can transfer their criminal record clearance or exemption pursuant to Section 80019(e) or Section 80019.1(f).
 - (2) The Department shall check the Child Abuse Central Index (CACI) pursuant to Penal Code Section 11170(b)(3). The Department shall investigate any reports received from the CACI. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. The Department shall not deny a license or take any other administrative action based upon a report from the CACI unless the Department substantiates the allegation of child abuse.
 - (3) The Department shall investigate any subsequent reports received from the CACI. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. The Department shall not revoke a license or take any other administrative action based upon a report from the CACI unless the Department substantiates the allegation of child abuse.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.81(b) and 1596.871, Health and Safety Code.

102371 FIRE SAFETY CLEARANCE**102371**

- (a) A fire safety clearance approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal shall be required for a large family child care home.
- (1) For purposes of Section 102371, "nonambulatory persons" includes the following persons who would be unable to leave a building unassisted under emergency conditions:
- (A) Any person who is unable, or likely to be unable, to physically and mentally respond to a sensory signal approved by the State Fire Marshal, or an oral instruction relating to fire danger; and
- (B) Persons who depend upon mechanical aids such as crutches, walkers, and wheelchairs.
- (2) The Director of Social Services or his/her designated representative, in consultation with the Director of Developmental Services or his/her designated representative, shall determine the ambulatory or nonambulatory status of persons with developmental disabilities.
- (3) The Director of Social Services or his/her designated representative shall determine the ambulatory or nonambulatory status of all other disabled persons placed after January 1, 1984, who are not developmentally disabled.
- (b) A fire clearance shall not be required for a small family child care home.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.78, 1596.81(b), 1597.44, 1597.45, 1597.465, 13131, 13131.3 and 13143, Health and Safety Code.

102395 PENALTIES**102395**

(a) An immediate penalty of \$100 per cited violation shall be assessed for the following:

- (1) Failure to obtain a Department of Justice clearance or criminal record exemption, request a transfer of a criminal record clearance or request and be approved for a transfer of an exemption as specified in Section 102370(d) for any individual required to be fingerprinted under Health and Safety Code Section 1596.871 prior to the individual's employment, residence or initial presence in the facility.
 - (A) Violation of Section 102370(d) will result in a citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars (\$100) per violation by the Department.
 - (i) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1596.871.
 - (2) Failure to provide a copy of the "Addendum to Notification of Parent's Rights Regarding Exclusion" of an individual from the home, to one parent or authorized representative of every child in care.
 - (A) The requirement to provide a copy shall include the parent of each new child enrolled as long as the exclusion is in effect.
 - (B) The copy shall be provided on the next day that the child receives care.
 - (3) Failure to provide a copy of the "Addendum to Notification of Parent's Rights Regarding Reinstatement" permitting an individual to return to the home, to every parent or authorized representative who received a copy of the "Addendum to Notification of Parent's Rights Regarding Exclusion" and whose child is still in care.
 - (4) Failure to obtain, and keep in the home, a parent's or authorized representative's signature indicating that he/she has been provided with each Addendum.
 - (A) This section shall be cited only if there is evidence that the parent or authorized representative was notified, but a signature was not obtained or was not maintained.
 - (5) Failure to provide signed addenda to the Department, when requested.
- (b) For purposes of Sections 102395(a)(2), (3) and (4) above, a violation shall be cited for each parent or authorized representative that has not been notified or has not signed the form acknowledging receipt of the notice.

102395 PENALTIES (Continued)**102395**

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For example:

If a home has 5 children from 5 different families enrolled and records indicate that the parents of 4 of the children have been notified, that will be one violation.

If a home has 5 children from 4 different families enrolled and records indicate that at least one parent of each of the children has been notified (4 parents), there is no violation.

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- | (c) Progressive civil penalties specified in Health and Safety Code Section 1596.99 shall not apply to penalties assessed for violation of Sections 102395(a)(1) through (5) above.
- (d) Unless otherwise provided, all penalties are due and payable upon receipt of notice for payment, and shall be paid only by check or money order made payable to the agency indicated in the notice.

NOTE: Authority cited: Sections 1596.81 and 1596.8712(g), Health and Safety Code. Reference: Sections 1596.871, 1596.8712(d) and 1596.99, Health and Safety Code.

Article 6. CONTINUING REQUIREMENTS**102416 PERSONNEL REQUIREMENTS****102416**

- (a) The licensee shall provide each employee with a copy of the Notice of Employee Rights (LIC 9052 (4/88)) form furnished by the Department.
 - (1) Each employee shall be requested to sign and date the notice form acknowledging receipt.
 - (2) A copy of the signed notice form shall be retained in the employee's personnel record.
 - (3) If the employee refuses to sign the notice form, a dated notation to that effect shall be retained in the employee's personnel record.
- (b) A claim by the employee alleging the violation by the licensee of Section 102416(a) shall be presented to the licensee within 45 days after the action as to which complaint is made and presented to the Division of Labor Standards Enforcement not later than 90 days after the action as to which complaint is made.
- (c) The licensee and other personnel as specified shall complete training on preventive health practices, including pediatric cardiopulmonary resuscitation and pediatric first aid, pursuant to Health and Safety Code Section 1596.866.

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- (1) Health and Safety Code Section 1596.866 provides in part:
 - (a) In addition to any other required training... each family day care home licensee who provides care shall have at least 15 hours of training on preventive health practices. The training shall include pediatric cardiopulmonary resuscitation, pediatric first aid, recognition, management, and prevention of infectious diseases, including immunizations, and prevention of childhood injuries. The training may include training on sanitary food handling, child nutrition, emergency preparedness and evacuation, caring for children with special needs, and identification and reporting of signs and symptoms of child abuse....
 - (b) ...a licensee of a large family day care home shall ensure that at least one person who has a current certificate in pediatric first aid and pediatric cardiopulmonary resuscitation shall be available at all times when children are present at the facility, or when children are off-site of the facility for facility activities....

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102416 PERSONNEL REQUIREMENTS
(Continued)**102416**

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(d) Completion of the training required pursuant to subdivisions (a) and (b) shall be demonstrated, upon request of the licensing agency, by the following:

(1) A current pediatric cardiopulmonary resuscitation card issued either by the American Red Cross or the American Heart Association, or by a training program that has been approved by the Emergency Medical Services Authority pursuant to Section 1797.191.

(2) A current pediatric first aid card issued either by the American Red Cross or by a training program that has been approved by the Emergency Medical Services Authority pursuant to Section 1797.191.

(3) A certificate of completion of a course or courses in preventive health practices as defined in subdivision (a) or certified copies of transcripts that identify the number of hours and the specific course or courses taken for training in preventive health practices as defined in subdivision (a).

(e) The training required under subdivision (a) shall not be provided by a home study course. This training may be provided through on-the-job training, workshops, or classes....

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(d) Prior to employment or initial presence in the child care home, all employees and volunteers subject to a criminal record review shall:

- (1) Obtain a Department of Justice clearance or a criminal record exemption as required by law or Department regulations or
- (2) Request a transfer of a criminal record clearance as specified in Section 102370(j) or
- (3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 102370.1(p), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.866, 1596.880, 1596.881, and 1596.882, Health and Safety Code.

102416.1 PERSONNEL RECORDS**102416.1**

- (a) Personnel records shall be maintained on each employee and shall contain the following information:
- (1) Employee's full name.
 - (2) Driver's license number if the employee is to transport children.
 - (3) Date of employment.
 - (4) Date of birth.
 - (5) Current home address and phone number.
 - (6) Documentation of completion of training on preventative health practices as required by Section 102416(c).
 - (7) Past experience, including types of employment and former employers.
 - (8) Duties of the employee.
 - (9) Termination date if no longer employed.
 - (10) A signed and dated copy of the Notice of Employee Rights [LIC 9052, (Rev. 03/03)] as required by Section 102416(a) and Section 102417.
 - (11) A signed statement regarding their criminal record history as required by Section 102370(c).
 - (12) Documentation of either a criminal record clearance or a criminal record exemption as required by Section 102370(d).
- (b) Personnel records shall be maintained for all volunteers and shall contain the following:
- (1) For volunteers that are required to be fingerprinted pursuant to Section 102370:
 - (A) A signed statement regarding their criminal record history as required by Section 102370(c).
 - (B) Documentation of either a criminal record clearance or a criminal record exemption as required by Section 102370(d).

102416.1 PERSONNEL RECORDS (Continued)**102416.1**

- (c) All personnel records shall be kept for at least three years following termination of employment/volunteer work.
- (d) All personnel records shall be maintained at the child care home and shall be available to the licensing agency for review.

NOTE: Authority cited: Sections 1596.81 and 1596.871, Health and Safety Code. Reference: Sections 1596.81, 1596.871, 1596.885 and 1596.8897, Health and Safety Code.

102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued)**102417**

- (n) A family child care home that maintains liability insurance or a bond pursuant to Section 102417(m)(1) or (2), and that provides care in premises that are rented or leased or uses premises which share common space governed by a homeowners' association, shall name the owner of the property or the homeowners' association, as appropriate, as an additional insured party on the liability insurance policy or bond if all of the following conditions are met:
- (1) The owner of the property or governing body of the homeowners' association makes a written request to be added as an additional insured party.
 - (2) The addition of the owner of the property or the homeowners' association does not result in cancellation or nonrenewal of the insurance policy or bond carried by the family day care home.
 - (3) Any additional premium assessed for this coverage is paid by the owner of the property or the homeowners' association.
- (o) The licensee shall maintain proof of control of property at the family child care home for review by the Department.
- (1) If the licensee owns or is buying the home, this is a copy of the property deed, the property tax statement, or a payment coupon from the mortgage company or bank.
 - (2) If the licensee is operating on rented or leased property, this is a copy of the rental agreement or lease.
- (p) A licensee who operates on rented or leased property, and who wishes to increase the capacity of the family child care home as specified in Section 102416.5(b)(3) or Section 102416.5(c)(1), shall obtain the written consent of the property owner/landlord to increase the home's capacity to eight or 14 children.
- (1) The original of the completed and signed consent form shall be attached to the family child care home's license and kept on file in the home.
- (q) A signed and dated copy of LIC 9052 (4/88), Notice of Employee Rights, shall be maintained in the employee's personnel record.

102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued)**102417**

- (r) Upon notice from the Department to remove an individual from the home, pursuant to Health and Safety Code Section 1596.871(c)(2), or to exclude an individual from the home, pursuant to Health and Safety Code Section 1596.8897, the licensee shall:
- (1) Immediately remove the individual and prevent the individual from returning to the home or having contact with children in care.
 - (2) Provide a copy of the Addendum to Notification of Parent's Rights (Regarding Removal/Exclusion) (LIC 995B, Rev. 03/01) to one parent or authorized representative of every child currently in care within one day of receipt of the notice and addendum from the Department.
 - (A) Upon notice from the Department that the individual may return to the home, provide a copy of the Addendum to Notification of Parent's Rights (Regarding Reinstatement) (LIC 995C, Rev. 03/01) to one parent or authorized representative of every child currently in care within one day of receipt of the notice and addendum from the Department.
 - (3) Obtain a signed and dated receipt from one parent or authorized representative that acknowledges that he/she was given a copy of the addendum specified in Section 102417(r)(2).
 - (4) Maintain copies of the signed and dated receipt required in Section 102417(r)(3) in each child's file. Copies shall be made available to the Department upon request.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.78, 1596.81(b), 1596.841, 1596.846(b) and (c), 1596.880, 1596.881, 1596.882, 1597.30, 1597.44, 1597.45, 1597.46, 1597.465, 1597.531, and 1597.54(b)(2), Health and Safety Code.

102419 ADMISSION PROCEDURES AND PARENTAL AND AUTHORIZED REPRESENTATIVE'S RIGHTS (Continued)**102419**

- (f) No family child care home shall discriminate or retaliate against any child or any child's parent or authorized representative because the parent or authorized representative has exercised his or her right to inspect the family child care home or has lodged a complaint with the Department against the family child care home.
- (1) If the licensee denies a parent or authorized representative the right to enter and inspect the family child care home or retaliates against any child or any child's parent or authorized representative, the Department shall issue the licensee a warning citation.
 - (2) For any subsequent violation of this right, the Department shall take appropriate action including, but not limited to, license revocation and imposition of a civil penalty upon the home of fifty dollars (\$50) per violation.
 - (3) The person present who is in charge of the family child care home shall determine whether to deny access to the following:
 - (A) An adult whose behavior presents a risk to children present in the home; and
 - (B) A parent who is subject to a court order denying him/her contact with the child if so requested by the child's parent or authorized representative.
- (g) If a child's parent or authorized representative refuses to sign the LIC 995A (8/02), a dated notation to that effect, containing the parent or authorized representative's name and telephone number, shall be kept in the child's record.
- (h) The licensee shall provide a copy of the Addendum to Notification of Parent's Rights (Regarding Removal/Exclusion) (LIC 995B Rev. 03/01) sent by the Department, that is still in effect, to one parent or authorized representative of every child when the parent or authorized representative arranges for child care services or on the first day the child receives care, whichever is first.
- (1) Upon notice from the Department that the excluded/removed individual may return to the facility, the licensee shall provide a copy of the Addendum to Notification of Parent's Rights (Regarding Reinstatement) (LIC 995C Rev. 03/01) to one parent or authorized representative of every child in Care within one day of receipt of the notice and addendum from the Department.
- (i) The licensee shall obtain a signed and dated receipt from one parent or authorized representative that acknowledges that he/she was given a copy of the addendum specified in Sections 102419(h) and (h)(1).
- (j) The licensee shall maintain copies of the signed and dated receipt required in Section 102419(i) in each child's file. Copies shall be made available to the Department upon request.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.853, 1596.857, 1596.859, 1596.872, 1596.874, 1597.07, 1597.30, and 1597.56, Health and Safety Code.

102421 CHILD'S RECORDS**102421**

- (a) The licensee shall maintain, in each child's record, the signed and dated notice form required in Section 102419(d).
- (1) The licensee shall keep the signed and dated notice form for at least three years following termination of service to the child.
- (b) The licensee shall maintain, in each child's record, a copy of the emergency information card required in Section 102417(g)(7).
- (c) In any case in which a licensee releases a minor to a peace officer pursuant to Section 305 of the Welfare and Institutions Code, the licensee shall provide the peace officer with the address and telephone number of the minor's parent or authorized representative in order to enable the peace officer to make the notification required by Section 308 of the Welfare and Institutions Code.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.857, 1596.872, 1596.876 and 1597.30, Health and Safety Code.

102423 PERSONAL RIGHTS**102423**

- (a) Each child receiving services from a family child care home shall have certain rights that shall not be waived or abridged by the licensee regardless of consent or authorization from the child's authorized representative. These rights include, but are not limited to, the following:
- (1) To be treated with dignity in his/her personal relationship with staff and other persons.
- (2) To receive safe, healthful, and comfortable accommodations, furnishings, and equipment.
- (3) To have parents or guardians informed by the licensee of the provisions of the law regarding complaints and the procedures for registering complaints confidentially, including, but not limited to the address and telephone number of the licensing agency's complaint unit.
- (4) To be free from corporal or unusual punishment, infliction of pain, humiliation, intimidation, ridicule, coercion, threat, mental abuse, or other actions of a punitive nature, including, but not limited to: interference with eating, sleeping or toileting; or withholding shelter, clothing, medication or aids to physical functioning.
- (b) The licensee shall give authorized representatives of children in care a consumer education and awareness handout. The Department shall provide this handout and distribute it to licensees.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.81(b) and 1597.30, Health and Safety Code.